

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA
PANAMA CITY DIVISION**

RAMON ARMAS BORROTO, JR.,

Plaintiff,

v.

CASE NO. 5:04cv165-RH/WCS

OFFICER McDONALD, et al.,

Defendants.

FIRST PRETRIAL ORDER

Plaintiff, an inmate in the Florida Department of Corrections, seeks relief under 42 U.S.C. §1983 as a result of an excessive use of force—a beating—allegedly administered at Washington Correctional Institution. Named as defendants are the officer who allegedly used the force and other officers and a nurse who allegedly watched the use of force but failed to stop it. Defendants make no claim that there was legitimate cause for any use of force; they assert instead that no use of force occurred. This order confirms and expands upon rulings announced on the record of the pretrial conference conducted by telephone on April 24, 2007.

Plaintiff is proceeding pro se. He has expressed his wish to be represented by an attorney if one volunteers to take on the case. The court will not appoint an attorney (that is, require an attorney to accept the case). The court will, however, notify members of the court's bar that plaintiff has requested representation. This will be done through the court's electronic filing system.

The status of the case is this. All discovery has been concluded, and all pretrial motions have been resolved, except in two respects. First, plaintiff has listed witnesses who are inmates in the Department of Corrections. Before a writ will be issued for their attendance at trial, more information is needed on their likely testimony. If an attorney appears for plaintiff, the attorney will be able to interview the witnesses (either in person or by telephone). If an attorney does not appear for plaintiff, then each witness will be required to appear for a deposition that plaintiff will attend by telephone and defendants' attorneys will attend in person or by telephone at their option. A decision whether to issue a writ for the witnesses' appearance at trial will be made based on the results of the interviews or depositions.

Second, plaintiff has sought further discovery. The request will be denied except in two respects. First, defendants will be required to produce documents relating to an alleged visit to plaintiff's cell by a white-shirted officer and nurse in December 2002 in response to plaintiff's claim that he was injured. Second,

defendants' attorney will be required to determine whether any defendant has been subjected to discipline as a result of use of force against any inmate, and if any defendant has been subjected to such discipline, plaintiff's request for discovery relating to the discipline will be addressed further. Defendants' attorney should be prepared to address the existence of documents described in this paragraph at the next pretrial conference.

For these reasons,

IT IS ORDERED:

1. The clerk shall send a notice to all members of the court's bar providing in substance:

This is a notice of an opportunity to provide pro bono representation in a case ready to be set for jury trial in Tallahassee. The case is *Borroto v. McDonald*, Case No. 5:04cv165-RH.

Plaintiff, an inmate in the Florida Department of Corrections currently housed at the Florida State Prison at Starke, seeks relief under 42 U.S.C. §1983 as a result of an excessive use of force—a beating—allegedly administered at Washington Correctional Institution. Named as defendants are the officer who allegedly used the force and other officers and a nurse who allegedly watched the use of force but failed to stop it. Defendants make no claim that there was legitimate cause for any use of force; they assert instead that no use of force occurred. Further information on the status of the case—including a description of the limited matters that must be addressed prior to trial—is included in the First Pretrial Order filed May 21, 2007.

Public funds are not available for payment of attorney's fees. Fees may be recoverable under applicable law if plaintiff ultimately prevails. *See* 42 U.S.C. §1988. Limited funds sometimes are available from the district's

Bench and Bar Fund for payment of out-of-pocket expenses incurred by attorneys providing representation of this type.

Members of the district's bar will be afforded access to the electronic docket without charge for the purpose of considering whether to undertake the representation. Any attorney who wishes to provide representation may contact plaintiff directly and may enter the case by filing a notice of appearance.

Any attorney who wishes to appear should file a notice of appearance by June 21, 2007.

2. The clerk shall set at a second pretrial conference by telephone for the first date available on or after June 25, 2007.

3. Defendants' motion (document 105) for leave to file their witness and exhibit list out of time is GRANTED. The witness and exhibit list (document 104) is deemed timely.

SO ORDERED this 21st day of May, 2007.

s/Robert L. Hinkle
Chief United States District Judge